IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SLYVIA SAMUELS	:	CIVIL ACTION
	:	
v.	:	
	:	
ALBERT EINSTEIN MEDICAL CENTER	:	NO. 97-3448

MEMORANDUM AND ORDER

HUTTON, J. September 14, 1998

Presently before the Court are Defendant's Motion for Partial Summary Judgment on Count I pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 6), Plaintiff's response thereto (Docket No. 7), and Defendant's reply thereto (Docket No. 8). Also before the Court is Defendant's unopposed Motion for Partial Summary Judgment on Count II (Docket No. 4). For the reasons stated below, the Defendant's motions are **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND

Taken in the light most favorable to the nonmoving party, the facts are as follows. Sylvia Samuels ("Plaintiff" or "Samuels") received her Bachelors of Science degree in nursing from Holy Family College. She was hired as a medical-surgical nurse by the Defendant, Albert Einstein Medical Center, in 1986.

When Samuels started her employment, the Defendant gave her a copy of its employee handbook. The handbook contained an equal employment opportunity policy and a progressive discipline policy. The handbook also included a disclaimer stating that employees remained at-will and that the handbook did not create any contractual rights on behalf of employees.

In September of 1995, the Defendant fired Plaintiff. The Plaintiff claims that this decision was motivated by religious discrimination, while the Defendant contends it was for disciplinary reasons.[1] Plaintiff then prepared a resume and began looking for alternative work. From the date of her termination until July 10, 1996, she checked want ads, submitted numerous applications and kept a running diary of responses.[2]

Then, on July 10, 1996, Plaintiff ceased submitting written job applications. In her deposition, Plaintiff stated that she decided to "give it a break for a while." Samuels Dep. at 113. In January of 1996, she accepted a part-time position supervising nurse's aides for Health Force at $12 per visit. While working part-time for Health Force, Jefferson Home Health Care offered her employment to supplement her work at Health Force. She was to

[1] For the purposes of both Defendant's Motions for Partial Summary Judgment, the reason the Plaintiff was fired is irrelevant.

[2] For the purpose of this Motion, the Defendant does not challenge the sufficiency of these efforts by Plaintiff to meet her duty to mitigate. Rather, the Defendant moves for partial summary judgment based on her failure to mitigate beginning on July 10, 1996.

provide skilled care at the home of patients and make $36 per visit. Samuels only received a $400 check for attending Jefferson's orientation and "never called them back." Samuels Dep. at 199-201. In September 1997, Health Force hired the Plaintiff on a full-time basis.

Plaintiff brought suit claiming that the Defendant discharged her because of her religion in violation of Title VII of the Civil Rights Act (Count I). Plaintiff also alleges that the Defendant breached an implied contract created by its handbook (Count II).

On March 13, 1998, Defendant filed a Motion for Partial Summary Judgment. In its Motion, Defendant requests that judgment be entered in its favor on Plaintiff's breach of implied contract claim (Count II). As of the date of this Order, Plaintiff has not filed a response. On April 3, 1998, Defendant filed a second Motion for Partial Summary Judgment. In this Motion, Defendant requests partial summary judgment in its favor on Plaintiff's Title VII religious discrimination claim for back pay and front pay damages after July 10, 1996. On April 14, 1998, Plaintiff filed a response to this Motion. Defendant filed a Reply Memorandum on April 17, 1998. Because both Motions are ripe for adjudication, this Court considers Defendant's Motions for Partial Summary Judgment together.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its

opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

Furthermore, a court may grant an unopposed motion for summary judgment where it is "appropriate." Fed. R. Civ. Pro. 56(e). This determination has been described as follows:

> Where the moving party has the burden of proof on the relevant issues, . . . the district court must determine that the facts specified in or in connection with the motion entitle the moving party to judgment as a matter of law. Where the moving party does not have the burden of proof on the relevant issues, . . . the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law.

Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

III. DISCUSSION

A. Failure to Mitigate Back Pay/Front Pay Damages

Defendant argues that it is entitled to partial summary judgment because Plaintiff failed to mitigate her damages. If an employer engages in unlawful employment practice, Title VII authorizes a back pay award. See 42 U.S.C. § 2000e-5(g)(1) (1994). This award "is a manifestation of Congress' intent to make 'persons whole for injuries suffered through past discrimination.'"

Loeffler v. Frank, 486 U.S. 549, 558 (1988) (quoting Albermarle Paper Co. v. Moody, 422 U.S. 405, 421 (1975)). A successful Title VII claimant may also receive front pay, which is "a remedy for the postjudgment effects of discrimination . . . . [and] compensates the plaintiff for lost income from the date of the judgment to the date the plaintiff obtains the position she would have accepted but for the discrimination." Sellers v. Delgado College, 902 F.2d 1189, 1196 (5th Cir.), cert. denied, 498 U.S. 987 (1990).

A successful claimant has a statutory duty to mitigate his or her damages. See 42 U.S.C. § 2000e-5(g)(1). Title VII provides: "Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce back pay otherwise available." Id. Failure to mitigate may also reduce front pay damages. See Sellers, 902 F.2d at 1196 ("In view of the magistrate's finding of fact that [the plaintiff] did not exercise reasonable diligence to obtain substantially equivalent employment and his conclusion that she was consequently entitled to back pay . . . we uphold the magistrate's denial of front pay."). The burden is on the employer to prove that the claimant failed to mitigate damages. See Booker v. Taylor Milk Co., 64 F.3d 860, 864 (3d Cir. 1995); Robinson v. Southeastern Pa. Trans. Auth., 982 F.2d 892, 897 (3d Cir. 1993); Anastasio v. Schering Corp., 838 F.2d 701, 707 (3d Cir. 1988).

In order to demonstrate failure to mitigate, an employer

must show that : (1) substantially equivalent work was available and (2) the Title VII claimant did not exercise reasonable diligence to obtain employment. See Booker, 64 F.3d at 864; Anastasio, 838 F.2d at 708. The determination of whether an employee met his duty to mitigate damages is a determination of fact. See Booker, 64 F.3d at 864.

1. Substantially Equivalent Work

The duty of a Title VII claimant is to use reasonable diligence to obtain substantially equivalent employment. See Ford Motor Co. v. EEOC, 458 U.S. 219, 231-32 (1982). Substantially equivalent employment is "employment that affords virtually identical promotional opportunities, compensation, job responsibilities, working conditions, and status as the position from which the Title VII claimant has been discriminatorily terminated." Booker, 64 F.3d at 866. However, two jobs are not substantially equivalent simply because they have similar salaries. See Mertig v. Milliken & Michaels of Del., Inc., 923 F. Supp. 636, 648-649 (D. Del. 1996).

In the case at hand, Defendant offered sufficient evidence demonstrating that there were substantially equivalent employment available after July 10, 1996. In Defendant's Exhibit D, Defendant produced dozens of advertisements for nursing jobs. Many of these advertisements came from the two sources the Plaintiff claimed to use during her job search--The Nursing

Spectrum and The Philadelphia Inquirer. See Def.'s Ex. D. Moreover, these employment opportunities appear to be substantially equivalent to her prior employment with the Defendant. Some of these jobs are for upwards of $50,000, while Plaintiff made only $38,000 when Defendant terminated her employment. In addition, many of these jobs appear to have the same benefits and opportunity of advancement that Plaintiff had at Albert Einstein Medical Center.

Indeed, Plaintiff offers no evidence disputing the substantial equivalence of these nursing jobs. Rather, the Plaintiff argues that there remains a genuine issue of material fact of whether the Plaintiff failed to use reasonable diligence in securing these substantially equivalent jobs. The Court now turns to this issue.

2. Reasonable Diligence

The reasonableness of a claimant's diligence should be evaluated by the individual characteristics of the claimant and the job market. See Booker, 64 F.3d at 864; Tubari Ltd., Inc. v. NLRB, 959 F.2d 451, 454 (3d Cir. 1992). A claimant under Title VII satisfies the reasonable diligence requirement "by demonstrating a continuing commitment to be a member of the work force and by remaining ready, willing, and available to accept employment." Booker, 64 F.3d at 864.

In this case, Defendant argues that it is entitled to

partial summary judgment because Plaintiff admitted to stopping her job search as of July 10, 1996. In support of its argument, Defendant offers the following deposition testimony by the Plaintiff:

> Q: Now, it appears that this list [Plaintiff's log of her job search efforts] ended on July 10 of 1996.
>
> A: Uh-huh.
>
> Q: What happened after that? Did you secure employment?
>
> A: No.
>
> Q: Did you make any other applications after July 10, '96?
>
> A: I didn't put anything in writing.
>
> Let me tell you, that was a year of my traumatic experience with Albert Einstein Medical Center. I tried very hard to get back in, as you can see. This happened - September I was fired. I tried right away to get my resume and I was sending out all these forms and I was getting nothing back. And by the summer of that year, I was very exhausted and very distressed, and I thought let me just give it a break for a while. Nothing is happening. Nothing is working . . .
>
> Q: Eventually did you secure employment?
>
> A: January -- it was before Christmas of '96 that I went into an office just by chance I passed by in Jenkintown. And I walked in and said, "You don't need a nurse or anything, do you?" I didn't have a resume. I was like, ha, what the heck; I have nothing to do. "You don't need a nurse, do you?"
>
> And this very sweet voice popped up and said, "Yes, we do, but we don't pay much."

> I said, “What office am I in and what do you want? What do you need?”
>
> She said, “Well, basically we supervise nurses aides and I need a nurse to supervisor [sic], but you only get $12 a visit” and I left.
>
> And that was December. And by January still nothing was happening. And I called her about the middle of January. I said, “Mary, this is me, the nurse that popped her head in the door. Can you still use me?”
>
> And she said, “Sure.” So I started doing part-time my $12 a visit, and that sort of started me back to humanity a bit.

Q: You mean $12 a visit?

A: That’s right.

Samuels Dep. at 113-116. In addition to this evidence, Defendant offers evidence that Plaintiff turned down work that paid her three times more per visit than the $12 per visit she received from the part-time work she obtained by chance at Health Force. Id. at 200.

The Plaintiff argues that partial summary judgment is inappropriate on this issue because Plaintiff never admitted to giving up her job search. In support of her argument, Plaintiff offers an affidavit by her which states in pertinent part:

> 2. Contrary to Defendant’s assertions, I never stopped looking for work or otherwise withdrew from the job market. Rather, I kept checking the want-ads and looking for work, and eventually succeeded in obtaining a part-time position supervising nurse’s aides for Health Force. This later evolved into a full-time position in September, 1997.
>
> 3. Even after I obtained the position with

> Health Force, I continued to search for employment comparable to my previous position at AEMC.

Samuels Aff. at ¶ 2-3. In its Reply Memorandum of Law, Defendant argues that this Court should not consider Plaintiff's sworn affidavit because it contradicts her direct testimony during her deposition. In support, Defendant cites Martin v. Merrell Dow Pharm., Inc., 851 F.2d 703, 704-06 (3d Cir. 1988). In that case, the Third Circuit held that a party opposing summary judgment cannot create a genuine issue of material fact by submitting an affidavit that contradicts previously sworn deposition testimony. See id.; see also Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991) ("When, without a satisfactory explanation, a nonmovant's affidavit contradicts earlier deposition testimony, the district court may disregard the affidavit in determining whether a genuine issue of material fact exists.").

Nevertheless, this Court finds that it may consider the Plaintiff's affidavit because the facts of Martin are distinguishable. In Martin, the plaintiff brought suit alleging that she took the drug Bendectin during her pregnancy and that it caused birth defects. See id. In deposition testimony, plaintiff stated that her first ingestion of Bendectin occurred on a day when the birth defects were already in existence. See id. Thereafter, Defendant moved for summary judgment citing plaintiff's deposition testimony as support. See id. In response, plaintiff submitted an

affidavit which clearly contradicted her earlier testimony about this central fact to her case. See id. In her affidavit, she

stated for the first time that she took Bendectin much earlier. See id.

The present case does not implicate the concerns that Martin did. See id. ("'If a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact." (quoting Perma Research & Dev. Co. v. Singer Co., 410 F.2d 572, 578 (2d Cir. 1978)). Defendant argues that the Plaintiff admitted in her deposition to stopping her job search. This Court disagrees. Counsel for the Defendant asked the Plaintiff: "Did you make any other applications after July 10, '96?" Plaintiff responded: "I didn't put anything in writing." While Plaintiff admitted that she ceased submitting written job applications, she never admitted to terminating her job search altogether. In her affidavit, Plaintiff does not seek to contradict this sworn testimony. Rather, she explains that "[she] kept checking the want ads and looking for work." Thus, in her affidavit, Plaintiff seeks to explain or clarify her earlier testimony which is an appropriate use of such a device. See Videon Chevrolet, Inc. v. General Motors Corp., 992 F.2d 482, 488 (3d Cir. 1993) (refusing to ignore nonmovant's affidavit because Martin only applied "in those clear and extreme facts" where nonmovant's deposition testimony was unambiguous and clearly contradicted by a

subsequent affidavit).

Because this Court concludes that it may consider Plaintiff's affidavit, the Defendant's motion for partial summary judgment must be denied. A review of the record indicates that after July 10, 1996, the Plaintiff took the following steps in attempting to secure employment: (1) she continued to check the want ads; (2) she continued to check on the status of written applications already submitted; and (3) she asked an employer if they needed a nurse which eventually led to a part-time job. See Samuels Aff. at ¶ 2-3. A factfinder could conclude that, even though Plaintiff stopped submitting written job applications, the efforts made outside of those applications were reasonable.

Furthermore, a factfinder could conclude that Plaintiff accepted a position at Health Force not because she was voluntarily removing herself from the nursing job market, but rather because she could not find substantially equivalent employment to her position at Albert Einstein Medical Center. See Booker, 64 F.3d at 864 ("Generally, a plaintiff may satisfy the 'reasonable diligence' requirement by demonstrating a continuing commitment to be a member of the work force and by remaining ready, willing, and available to accept employment."). In her affidavit, Plaintiff states that she continued to look for substantially similar employment even when employed part-time at Health Force. See Samuels Aff. at ¶ 3. A Title VII plaintiff is permitted to take an interim job or even a

permanent job which might pay less or have fewer responsibilities than her prior position after the plaintiff has made reasonable and diligent efforts to find comparable employment. See Ford Motor Co., 458 U.S. at 231 n.14; Tubari Ltd, Inc., 959 F.2d at 456-57; Meyer v. United Air Lines, Inc., 950 F. Supp. 874, 876 (N.D. Ill. 1997). If Plaintiff failed to accept this part-time employment, she may have failed to mitigate her damages by refusing to take the only job offered to her. Therefore, summary judgment is not appropriate on this issue because a factfinder could conclude that Plaintiff acted reasonably in accepting part-time work, after months of submitting written applications, and continuing to search for full time work during this employment.

Defendant cites a litany of cases in which courts concluded that partial summary judgment was appropriate because the Title VII plaintiff failed to mitigate their damages by ceasing their job search efforts or accepting only part-time work. See, e.g., Hunter v. Allis-Chalmers Corp., 797 F.2d 1417 (7th Cir. 1986) (granting summary judgment because nonmovant sought new employment only every couple of months during five years of unemployment, and thus, failed to mitigate his damages); Meyer, 950 F. Supp. at 877 (granting summary judgment because nonmovant, who once worked in United's legal department, failed to mitigate her damages when she accepted part-time employment). These cases, however, are not similar to this case. First, in those cases where the Title VII

claimants stopped seeking work, they completely ceased their efforts and removed themselves from the workforce. Here, Plaintiff claims that she never completely stopped looking for work. See Samuels Aff. at ¶ 3. Second, in those cases where the Title VII claimant took part-time work only, they additionally stopped looking for full-time employment. See Meyer, 950 F. Supp. at 877 ("To this day, [the Title VII claimant] has not made any attempts to find a full-time position comparable to the one she held . . ."). In this case, Plaintiff never stopped looking for full-time employment, and indeed, secured full-time employment from her part-time employer. See Samuels Aff. at ¶ 2-3; Samuels Dep. at 116. Thus, this Court finds Defendant's cases inapposite.

Finally, the Court now turns to Defendant's arguments concerning Plaintiff's refusal to continue employment with Jefferson which would pay her three times more per visit than her work with Health Force. This Court cannot conclude, as a matter of law, that this was unreasonable on Plaintiff's part. This Court notes that: "[A] discrmininatee who immediately accepts a one-third reduction in pay without making any effort to secure alternative suitable interim employment has not exercised reasonable diligence." Tubari, 959 F.2d at 459. The Plaintiff in this case, however, did make efforts to secure alternative suitable employment. Plaintiff eventually did secure full-time employment with Health Force in September of 1997, perhaps due to her

continued commitment to that company. Therefore, the Court finds that summary judgment is inappropriate on this issue as well.

B. Implied Contract

Defendant argues that it is entitled to partial summary judgment because the handbook, as a matter of law, could not have created an implied contract between the Plaintiff and Defendant. Under Pennsylvania law, all employment is presumed to be at will. See Stumpp v. Stroudsburg Mun. Auth., 540 Pa. 391, 396, 658 A.2d 333, 335 (1995) ("The law in Pennsylvania is abundantly clear that, as a general rule, employees are at will, absent a contract, and may be terminated at any time, for any reason or for no reason."); Paul v. Lankenau Hosp., 524 Pa. 90, 95, 569 A.2d 346, 348 (1990) ("Any employee may be discharged with our [sic] without cause, and our law does not prohibit firing an employee for relying on an employer's promise."); Geary v. United States Steel Corp., 456 Pa. 171, 175, 319 A.2d 174, 176 (1974) ("Absent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason."). Thus, absent a statutory or contractual provision, either party may terminate an employment relationship for any or no reason. See Stumpp, 540 Pa. at 396, 658 A.2d at 335; Paul, 524 Pa. at 95, 569 A.2d at 348; Geary, 456 Pa. at 175, 319 A.2d at 176. Nevertheless, the presumption of employment-at-will may be overcome if the employee demonstrates that there is an implied contract alters her at-will status. See Scott v. Extracorporeal, Inc., 376 Pa. Super. 90, 95, 545 A.2d 334,

336 (1988) ("The [at-will] presumption may be overcome by [an] . . . implied in fact contract (the parties did not intend it to be at-will) . . . .").

In Pennsylvania, an employer handbook may create an implied contract between employee and employer. See Ruzicki v. Catholic Cemeteries Ass'n, 610 A.2d 495, 497 (Pa. Super. 1992) ("'A handbook is enforceable against an employer . . . .'" (quoting Scott, 376 Pa. Super. at 95, 545 A.2d at 336)). The employee, however, must show that "a reasonable person in the employee's position would interpret its provisions as evidencing the employer's intent to supplant the at-will rule." Id. Moreover, the handbook must clearly indicate that the employer intended to alter the employee's at-will employment. See id. Finally, it is for the court to interpret the handbook to determine whether it contains evidence of employer's intention to be legally bound. See id.; see also Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 660 (3d Cir. 1990) (stating that it is duty of court to determine if evidence suffices to defeat at-will presumption).

In this case, in Count II of her Complaint, Plaintiff argues that the Defendant's employee handbook created an implied contract that altered her at-will status. See Pl.'s Compl. ¶ 20. Specifically, Plaintiff claims that Defendant violated the equal employment opportunity and progressive discipline provisions of the handbook. See id. However, the Defendant's handbook contains no

statement clearly indicating the Defendant's intent to alter the employee's at-will employment. Rather, the handbook states: "This handbook is a guide to assist employees during employment and replaces other handbooks previously distributed. However, neither the contents of this handbook, nor any other company communication, practice or policy, create any contractual rights on behalf of employees." Handbook at 3. The handbook further states: "Employees are employees 'at will' for an indefinite period and may resign or be discharged at any time for any reason, or no reason at all. Nothing in this handbook or any other policy or communication, whether oral or written, changes an employee's 'at will' status." Id.

A reasonable person in Plaintiff's position could not interpret the provisions in Defendant's handbook as an intent to alter the at-will rule. See Ruizicki, 416 Pa. Super. at 42-43, 610 A.2d at 498 ("Given the explicit disclaimer stating that the handbook does not effect an employee's at-will status, even assuming that the handbook applies to the appellant, appellant faces an insurmountable burden in arguing that the handbook converts him from an at-will employee to one who can only be fired through the use of progressive discipline as articulated in the handbook".); Rutherfoord v. Presbyterian-Univ. Hosp., 417 Pa. Super. 316, 612 A.2d 500, 503-04 (finding against employee's implied contract claim because handbook had disclaimer); see also

Cox v. Vogel, No. CIV.A.97-3906, 1998 WL 438492, at *8 n.4 (E.D. Pa. July 29, 1998) ("Moreover, given the handbook's reaffirmation of the at-will status of Dorwart employees and its disclaimer that it was not an implied contract, any argument that the handbook changed plaintiff's at-will status would be unavailing."); Anderson v. Haverford College, 851 F. Supp. 179, 182 (E.D Pa. 1994) (dismissing plaintiff's implied contract claim because letter accompanying handbook stated that the handbook was not a contract and nothing in the handbook altered the plaintiff's at-will status). Defendant's disclaimer in the handbook, which stated that the provisions of the handbook are not intended to be a legal contract, clearly indicate the Defendant's intent not to confer rights upon the Plaintiff. See Martin v. Capital Cities Media, Inc., 354 Pa. Super 199, 511 A.2d 830, 841 (1986) (stating that handbook disclaimers should be given effect by courts so long as they are conspicuous), appeal denied, 514 Pa. 643, 523 A.2d 1132 (1987); see also Anderson, 819 F. Supp. at 182 ("Courts have held that provisions in employee handbooks which contain disclaimers or state there is no intent to create an employment contract are sufficient to retain the at-will presumption.").

Therefore, this Court finds that there is insufficient evidence to raise a material issue of whether the Defendant's handbook created an implied contract altering Plaintiff's at-will employment status. In the present case, the Plaintiff failed to

put forth any affirmative evidence to substantiate her allegations of an implied contract. The Defendant points to this deficiency and argues that no such implied contract could exist under Pennsylvania law. The Plaintiff, not the Defendant, has the burden of proof on these issues. The deficiency in the Plaintiff's evidence entitles the Defendant to judgment as a matter of law. Thus, it is appropriate to grant the Defendant's uncontested motion for summary judgment. See Anchorage Assocs., 922 F.2d at 175.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SLYVIA SAMUELS	:	CIVIL ACTION
	:	
v.	:	
	:	
ALBERT EINSTEIN MEDICAL CENTER	:	NO. 97-3448

O R D E R

AND NOW, this 14th day of September, 1998, upon consideration of Defendant's Motions for Partial Summary Judgment, IT IS HEREBY ORDERED that:

(1) Defendant's Motion for Partial Summary Judgment on Plaintiff's claim for back pay and front pay damages after July 10, 1996 is **DENIED**;

(2) Defendant's Motion for Partial Summary Judgment on Plaintiff's claim for breach of implied contract (Count II) is **GRANTED**; and

(3) This case is listed for trial for October 13, 1998.

BY THE COURT:

_____
HERBERT J. HUTTON, J.